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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,574	07/13/2000	Jeremy Wertheimer	09765-015001	4957

26161 7590 08/26/2003

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

ROBINSON BOYCE, AKIBA K

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application N .

09/615,574

Applicant(s)

WERTHEIMER ET AL.

Examiner

Akiba K Robinson-Boyce

Art Unit

3623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 01 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Susanna Diaz*  
*Susanna Diaz*  
*Primary Examiner*  
*Art. 3623*

Continuation of 5. does NOT place the application in condition for allowance because: Gaspard, II does predict the availability of seats in Col. 11, lines 17-21 where it is disclosed that there is a determination stage that shows whether or not a passenger seat will be available for a passenger transportation request. Here, the transportation request serves as a query since the passenger can include multiple inputs in order to determine the seat availability (See Col 6, lines 60-64, note that these inputs do not include the seat availability). In addition, Gaspard, II compares the actual times to the predicted times. In this case, these times are for a particular schedule. Since seating availability is included in schedule analysis, once the user finds that the predicted times are reliable, the schedule for the transportation request for those predicted times can be created. Since seat availability is determined per transportation request, it is obvious to conclude that the available seats for these predicted times are the seats that can fit into the actual schedule.

In addition, the applicant argues that prior art used does not disclose competitive travel scenarios. However, Gaspard, II discloses this competitive scenarios in Col. 11, lines 7-25 where the host searches a route given for a transportation request in a route database. Once all of the routes that relate to a particular transportation request are retrieved, a determination is made as to whether these transportation requests can be added to existing routes and also whether or not a passenger seat will be available for a passenger transportation request. In addition, each transportation request is evaluated as to available passenger seat in stage (See Col. 11, line 66-Col. 12, line 1). In this case, the competition is based on the available seats in stage per transportation request.